term also includes an institution that maintains reserve balances in its master account on behalf of one or more other (respondent) institutions.

d) **Respondent** means an institution that settles the debits and credits for some or all of its Reserve Bank transactions (other than Fedwire®[1] transactions and Fed funds checks) in the master account of another (correspondent) institution. The term also includes a nonmember institution that maintains its required reserve balances in the master account of another (correspondent) institution.

2.0 ACCOUNT RELATIONSHIPS

2.1 MASTER ACCOUNT

Except as provided below, a separately chartered institution may maintain a single master account with only the Reserve Bank in whose District the institution is located ("Administrative Reserve Bank" or "ARB"; see Section 2.2). The master account may be used to maintain required reserve balances and other funds or securities balances. Debits and credits arising from transactions conducted by the institution on its own behalf and/or on behalf of others with or through any Reserve Bank, regardless of location, are posted to the master account.

An institution may have only one master account, except that:

- it may retain, for a transitional period not to exceed 12 months, the master account of a nonsurviving institution with which it has merged or consolidated. The Administrative Reserve Bank may restrict the use of such an account as it deems necessary or appropriate, and may require that the institution execute a security agreement covering multiple master accounts;

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[1] Fedwire is a registered service mark of the Federal Reserve Banks.

- a U.S. branch or agency of a foreign bank, an Edge corporation, or an agreement corporation may maintain a single master account, or it may maintain a master account for each group of offices located in the same state and the same Federal Reserve District; and
- an Administrative Reserve Bank may, in its discretion, allow multiple master accounts in other situations.

If an institution is allowed to have multiple master accounts, any reference in this Circular to "master account" or "account" should be read as "master accounts" or "accounts."

2.2 ELIGIBLE ACCOUNT HOLDERS

An institution may apply to open a master account with a Reserve Bank if the institution is located in the Reserve Bank's District and is:

- a member bank, as defined in Section 1 of the Federal Reserve Act, 12 U.S.C. § 221;
- a depository institution, as defined in Section 19(b)(1)(A) of the Federal Reserve Act, 12 U.S.C. § 461(b)(1)(A). (Section 19(b)(1)(A) generally defines "depository institution" to include commercial banks, mutual savings banks, federal savings banks, savings and loan associations, and credit unions);
- a U.S. branch or agency of a foreign bank, as defined in Section 211.21(b) or (d) of Regulation K, 12 CFR § 211.21(b) or (d);
- an Edge or agreement corporation, as defined in Section 25A or 25 of the Federal Reserve Act, 12 U.S.C. §§ 611 *et seq.*, or §§ 601 *et seq.*, or
- any other entity authorized to apply to open a master account.

An institution is considered to be located in the Federal Reserve District specified in its charter or organizing certificate (or, if no such location is specified, in the District where its head office is located), unless it has been notified that the Board of Governors of the Federal Reserve System has determined otherwise (see Section 204.3(b)(2)(ii) of Regulation D).

2.3 ESTABLISHING AN ACCOUNT

To establish a master account with a Reserve Bank, an institution must execute a Master Account Agreement (Appendix 1). By opening or maintaining a master account, an institution agrees to be bound by all the provisions, as amended from time to time, of this Circular and of all other Reserve Bank operating circulars that cover services that it obtains from any Reserve Bank. Each master account is subject to Reserve Bank approval.

A foreign banking institution must execute the Foreign Banking Institution Account Agreement and exhibits instead of the Master Account Agreement. The Foreign Banking Institution Account Agreement is available on request.

* * * * *

6.4 GOVERNING LAW AND ACTIONS

This Circular shall be governed by Federal law, and, to the extent not inconsistent with Federal law, by the laws of the State in which the Reserve Bank's head office is located. Any action against a Reserve Bank for any act or omission relating to an account relationship or transaction must be brought within one calendar year from the date of the transaction in the United States District Court and Division where the head office of the Reserve Bank is located, and shall not claim trial by jury.

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(3)

No. 05-1168

FILED

MAY 22 2006

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

TEXAS STATE BANK,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For *Writ* Of *Certiorari*
To The United States Court Of Appeals
For The Federal Circuit

AMICUS CURIAE BRIEF OF U.S. CONGRESSMAN RON PAUL IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether Petitioner has a cognizable property interest in the interest earned on assets of a Federal Reserve Bank purchased with Petitioner's non-interest-bearing deposits in the Reserve Bank, such that the transfer of such earnings to the U.S. Treasury rather than to Petitioner violates the Takings Clause of the Fifth Amendment to the U.S. Constitution?

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AMICUS CURIAE BRIEF OF CONGRESSMAN RON PAUL IN SUPPORT OF PETITIONER

Mountain States Legal Foundation respectfully submits this *amicus curiae* brief on behalf of United States Congressman Ron Paul in support of Petitioner Texas State Bank. Pursuant to Supreme Court Rule 37.3(a), this *amicus curiae* brief is filed with the written consent of the parties.[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

In January 2005, Congressman Ron Paul began his ninth term in the U.S. House of Representatives. He represents the 14th Congressional District of the State of Texas. The boundary of the district trends along the Gulf Coast south of Houston almost to Corpus Christi; north through Victoria and west close to San Antonio, then north to Hays County near Austin. From Hays County, the district's boundary trends east to Fayette and Colorado Counties, south through Wharton County, then back to the Gulf through the lower half of Brazoria County. In all, the district encompasses more than 22,000 square miles.

Congressman Ron Paul enjoys a national reputation as the premier advocate for liberty in politics today. Dr. Paul is the leading spokesman in Washington for free markets and a return to sound monetary policies based on

[1] Counsel for Petitioner and Counsel for Respondent consented to the filing of this *amicus curiae* brief with the Clerk of the Court. In compliance with Supreme Court Rule 37.6, MSLF represents that no counsel for either party authored this brief in whole or in part and that no person or entity, other than MSLF, made a monetary contribution toward the preparation or submission of this brief.

commodity-backed currency. In the words of former Treasury Secretary William Simon, Dr. Paul is the "one exception to the Gang of 535" on Capitol Hill.[2]

Ron Paul was born and raised in Pittsburgh, Pennsylvania. He graduated from Gettysburg College and Duke University School of Medicine, before proudly serving as a flight surgeon in the U.S. Air Force during the 1960s.

While serving in Congress during the late 1970s and early 1980s, Dr. Paul was a member of the House Banking Committee and a strong advocate for sound monetary policy and an outspoken critic of the Federal Reserve's inflationary measures. He was a key member of the Gold Commission, advocating a return to a gold standard for the currency of the United States. In 1984, he voluntarily relinquished his House seat and returned to his medical practice.

Dr. Paul returned to Congress in 1997 to represent the 14th Congressional District of Texas. He is a member of the Financial Services Committee and Vice-Chairman of the Oversight and Investigations Subcommittee.

Dr. Paul is the author of several books, including *The Case for Gold*.[3] He has been a distinguished counselor to the Ludwig von Mises Institute and is quoted widely by scholars and writers in the fields of monetary policy, banking, and political economy.

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[2] http://www.pittsburghlive.com/x/pittsburghtrib/opinion/columnists/vassilaros/s_445683.html (last visited May 10, 2006).

[3] Rep. Ron Paul and Lewis Lehrman, *The Case for Gold* (Cato Institute 1982).

REASONS FOR GRANTING *CERTIORARI*

The Court should grant *certiorari*: (1) to restore the constitutionally protected property rights of Texas State Bank and its accountholders; (2) because the case deals with vital issues of public and monetary policy; (3) to prevent further abuses and negative impacts visited upon the nation's monetary system by the Federal Reserve; and (4) to retreat somewhat from the *Nortz* line of cases under which the federal government confiscated commodity money under threats of fines and jail sentences without providing just compensation. *Nortz v. U.S.*, 294 U.S. 317 (1935).

ARGUMENT

I. TAKINGS OVERVIEW

Under the Fifth Amendment to the United States Constitution and longstanding precedent, where the federal government compels the physical confiscation of assets resulting in losses for property owners, a taking has occurred and, as such, must be compensated so as not to run afoul of the Takings Clause of the U.S. Constitution. *Loretto v. Manhattan Teleprompter CATV Corp.*, 458 U.S. 419 (1982). Even though, as may be true in this case, the government later returns the asset to the rightful owner, its deprivation to the detriment of the property owner warrants compensation during such time as the owner is separated from the income the owner's asset would otherwise generate. "The usual measure of just compensation for a temporary taking, therefore, is the fair rental value of the property for the period of the taking." *Yuba Natural Resources, Inc. v. United States*, 904 F.2d 1577, 1581 (Fed.Cir.1990); *see also Kimball Laundry Co. v. United*

States, 338 U.S. 1, 7 (1949) ("[T]he proper measure of compensation . . . is the rental that probably could have been obtained. . . ."). This is especially true when the government itself has stepped into the shoes of the property owner and has, itself, generated income with the asset.

Similarly, "just compensation" is warranted in this case. The instant case is unique, however, because the Respondent is most atypical. This case does not center on some urban redevelopment authority's attempt to confiscate private property on behalf of a "big box" outlet. Rather, it involves a challenge to a taking by an entity that former Congressman William Patman of Texas labeled a "constitutionally . . . queer duck."[4] Moreover, the Federal Reserve is a highly secretive entity with which most Americans are unfamiliar and few understand – a status that prompted Henry Ford, Sr., to remark, "It is well enough that the people of the nation do not understand our banking and monetary system for, if they did, I believe there would be a revolution before tomorrow morning." Greider, *supra*, at 55.

II. MONEY AND BANKING FUNDAMENTALS

"It is impossible to understand money and how it functions, and therefore how the Fed functions, without looking at the logic of how money, banking, and Central

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[4] "A slight acquaintance with American constitutional theory and practice demonstrates that, constitutionally, the Federal Reserve is a pretty queer duck." William Greider, *Secrets of the Temple* 49-50 (Simon & Schuster 1987) (quoting Congressman Patman's floor statement).

Banking developed."[5] As such, this *amicus* contends that the full importance of the case at issue cannot be appreciated absent this Court understanding those fundamental precepts, and, in furtherance thereof, *amicus* respectfully submits the following discussion.

A. Money's Origin

"Money is nothing but a medium of exchange and it completely fulfills its function when the exchange of goods and services is carried on more easily with its help than would be possible by means of barter."[6] Thus, money can be defined as a universally accepted medium of exchange. Simple logic allows most anyone to understand the benefit and efficiency gains to be had by a society that employs a medium of exchange. For example, the use of money results in efficiency because it eliminates search costs by solving the double-coincidence-of-wants problem. "[T]he first difficulty in barter is to find two persons whose disposable possessions mutually suit each other's wants. There may be many people wanting, and many possessing those things wanted; but to allow of [sic] an act of barter there must be a double coincidence, which will rarely happen."[7] That is, because of "money," the producer of carrots who wants beef must not necessarily spend inordinate amounts of time seeking out the seller of beef who

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[5] Murray N. Rothbard, *The Case Against the Fed* 12 (Ludwig Von Mises Institute 1994).

[6] Ludwig von Mises, *The Theory of Money and Credit* 31 (Liberty Classics 1980).

[7] http://economics.about.com/library/glossary/bldef-double-coincidence-of-wants.htm (quoting W. Stanley Jevons 1893) (last visited May 11, 2006).

also wants carrots in exchange. Rather, by trading his carrots for "money," he may find much easier a seller of beef who will gladly accept "money" thus allowing him to find the beef he seeks before his carrots rot as he seeks out the one seller of beef who coincidentally also wants carrots.[8] Second, money allows for cost accounting without which no firm can calculate whether it is making profits or losses. Money allows a business to determine input costs and output revenues using a common denominator, units of money. Rothbard, *supra*, at 15-16.

Yet, ironically, despite the obvious public benefit so important to any society as is a medium of exchange, no government may simply, effectively, or artificially infuse money into an economic system. Von Mises, *supra*, at 31. In fact, despite the fact that money was used in all ancient civilizations, no historical record of any such infusion exists.[9] For one thing, for a ruler to infuse money into an economy, he would have to specify the precise exchange ratios between the newly defined "money" and all other goods and services. Rothbard, *supra*, at 16.

Rather, money emerges through spontaneous self-interested actions of individuals who, through voluntary exchange, "rate" certain commodities as "more tradable"

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[8] *See* Joseph M. Ostroy and Ross M. Starr, *The Transactions Role of Money, in Handbook of Monetary Economics* 26 (1990).

[9] "I do not know of a single historical case of fiat money supplanting commodity money through competition rather than compulsion. Historically, the introduction of fiat money has come about by the permanent suspension of redeemability of the central bank's liabilities, enriching only the government." George A. Selgin, *On Ensuring the Acceptability of a New Fiat Money*, 26 Journal of Money, Credit, and Banking 800, 811 (1994).